May 20, 2003

Standing Committee on Agriculture, Forestry and Environment
Second Report of the Fourth Session Sixty-first General Assembly
Potato Wart

Madam Speaker and Members of the Legislative Assembly:

I have the pleasure to present the final report of the Standing Committee on Agriculture, Forestry and Environment on the topic of potato wart.

Order of Reference

On April 3, 2001, the following motion (Motion #17) was passed unanimously in the Legislative Assembly of Prince Edward Island:

WHEREAS the potato industry is vitally important to the overall economy of Prince Edward Island;

AND WHEREAS the potato industry has been nurtured for generations by many thousands of Islanders;

AND WHEREAS the discovery in October, 2000, of potato wart in one section of one Prince Edward Island potato field led to the closure of the United States border to potato shipments from the province;

AND WHEREAS this border closure has been devastating to the province's potato industry;

AND WHEREAS the impact of the potato wart crisis is being felt in many sectors of the Prince Edward Island economy;

AND WHEREAS full disclosure of the events leading up to and subsequent to the discovery of potato wart in Prince Edward Island would be beneficial in ensuring that a similar circumstance never occurs again;

THEREFORE BE IT RESOLVED that the potato wart crisis be referred to the Standing Committee on Agriculture, Forestry and Environment for a full and complete examination.

Background

Prior to October 2000, it was believed that potato wart (*Synchytrium endobioticum*) disease was not present in Prince Edward Island. However, this view changed when infected potatoes were

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discovered in a single field in the province on October 20, 2000. Potato wart fungus, while not a food safety or human health issue, makes potatoes unmarketable and reduces yields. It is a serious disease of quarantine significance.

Repercussions of the discovery were swift and considerable. By October 31, 2000, the United States Department of Agriculture had closed the U.S. border to the movement of Prince Edward Island seed potatoes and table stock potatoes. The border was not reopened until April 30, 2001, some six months later. The impact on the potato industry was devastating. Because of the significance of agriculture to the province, it would be fair to say that there was no sector of the economy that did not feel the effects of the crisis.

By resolution in April 2001, your Standing Committee on Agriculture, Forestry and Environment was charged with the responsibility of conducting a full and complete examination of the events leading up to and subsequent to the discovery of the potato wart fungus in the province.

Scope of Investigation

After receiving its mandate to investigate the potato wart crisis, your Committee commenced its work on April 17, 2001.

In total, your Committee met eleven times to consider this matter: on April 17, 2001; September 21, 2001; November 9, 2001; November 20, 2001; December 12, 2001; January 10, 2002; January 23, 2002; February 4, 2003; April 9, 2003; April 24, 2003; and May 15, 2003.

Your Committee reported progress to the Legislative Assembly on May 2, 2001; December 4, 2001; April 23, 2002; and December 3, 2002. In each case, your Committee's reports were received and adopted, and your Committee was authorized to continue its inquiries.

Your Committee heard testimony from the Honourable Mitch Murphy, Minister of Agriculture and Forestry; Mr. John MacQuarrie, Deputy Minister of Agriculture and Forestry; Mr. Ivan Noonan, General Manager of the P.E.I. Potato Board; Ms. Brenda Simmons, Assistant General Manager, P.E.I. Potato Board; Mr. Arthur MacDonald, President of the P.E.I. Potato Producers' Association; Mr. Brian Ching, Past President of the P.E.I. Potato Producers' Association; and Mr. Don Love and Mr. David MacSwain, representing the Canadian Food Inspection Agency.

A number of documents were reviewed by your Committee during its investigations. A total of 824 pages of information was provided by the Canadian Food Inspection Agency in response to a request made under the *Access to Information Act*. A report written by Dr. Robert Coffin, of Cavendish Farms, detailing the detection and management of the potato wart fungus, was also made available to your Committee. The provincial Department of Agriculture and Forestry forwarded copies of materials presented during the public hearing on December 12, 2001, which included a complete chronology of key events relating to the discovery of potato wart.

The Prince Edward Island Potato Board submitted an industry overview and a second chronology of events covering the period from October 2000 to August 2001. The Canadian Food Inspection Agency filed information regarding plant pest information and photographs of diseased potatoes. All documents received will remain in your Committee's permanent file on this issue.

In addition, your Committee recently has requested copies of the updated *Three Year Operational Work Plan* and the *Long Term Management Plan*, now under review by the Canadian Food Inspection Agency, United States Department of Agriculture and other key stakeholders. The Canadian Food Inspection Agency has undertaken to provide these documents which will be added to the permanent records of your Committee.

Committee Members

Permanent members of your Committee are as follows:

Norman MacPhee, Chairman (MLA District 17, Crapaud-Hazel Grove)
Philip Brown (MLA District 23, Cascumpec-Grand River)
Hon. Michael Currie (MLA District 3, Georgetown-Baldwin's Road)
Cletus Dunn (MLA District 26, Alberton-Miminigash)
Eric Hammill (MLA District 19, Bordon-Kinkora)
Wilbur MacDonald (MLA District 6, Belfast-Pownal Bay)
Hon. Ron MacKinley (MLA District 16, North River-Rice Point)

Legal Challenge

As part of its investigations, your Committee invited two representatives from the federally-mandated Canadian Food Inspection Agency (CFIA) to appear before it on three separate occasions in late 2001. All invitations were declined, and your Committee took the unusual step of issuing warrants to compel their attendance.

The Federal Government made application to have the subpoenas stayed. The matter was heard on January 7, 2002, and an interim declaration was made, granting a temporary exemption to the CFIA officials from complying with the summonses, and setting a date of March 15 to hear the case.

In early 2002, the work of your Committee turned from investigation of the potato wart crisis to preparation for the upcoming court case. All pertinent documentation was provided to your Committee's legal counsel, a departmental solicitor from the provincial Office of the Attorney General, to assist in drafting of affidavits. Several briefings were held throughout the process, dealing with parliamentary privilege, and various aspects of the legal challenge to the authority of your Committee.

The case, with its implications limiting inquiries between provincial governments and the federal government, drew the attention of the Speaker of the Legislative Assembly of Ontario who was granted intervener status.

Legal arguments were heard on June 11 and 12, 2002, before The Honourable Justice Wayne D. Cheverie of the Prince Edward Island Supreme Court. In January 2003, a decision was handed down. Justice Cheverie determined that committees of the Legislative Assembly are extensions of the Legislative Assembly itself and enjoy a constitutional power to compel the attendance of witnesses. This power exists notwithstanding the witnesses sought to be compelled to appear are employees of another level of government.

He stated, "It is my conclusion the Legislative Assembly of Prince Edward Island has the power to summon witnesses and order them to produce documents. This power is constitutional by virtue of the fact it is an exercise of inherent parliamentary privilege. The Committee of the House is an extension of the House and possesses the same constitutional power to summon witnesses and order them to produce documents. For reasons already given, I see no reason why the witnesses (the applicants Love and MacSwain) should be excused or exempt from the summonses. Finally the Judicial Review Act does not apply to a decision of the Committee. Therefore the application (from CFIA) and the application for judicial review are dismissed."

This legal precedent, although a by-product of the examination of the potato wart crisis, is an important outcome of your Committee's work over the past two years. It is a legacy for all Canadian jurisdictions, serving as a guide and authority concerning the parliamentary power to send for persons, papers and records.

Recommendations

At the conclusion of the public hearings and after reviewing all the documentation received to date, your Committee is satisfied that the potato wart crisis was handled on behalf of the province in the most professional, thorough and scientific manner possible. Your Committee believes it has received full disclosure of the events leading up to and subsequent to the discovery of potato wart in Prince Edward Island. The level of competence displayed in the very early days of the crisis, continuing through the extensive testing and containment measures which were implemented, through to the present with work continuing on the Operational Work Plan and Long Term Management Plan, is to be commended. Your Committee asserts it confidence in the surveillance, control, and management protocols that have been put in place to avert a similar crisis occurring in the future.

Your Committee is pleased to recommend the following in support of the Prince Edward Island potato industry:

1. That the national potato industry, plant health scientists, and provincial and federal officials continue collaborative efforts to research, control and manage outbreaks of potato wart disease;

2. That federal and provincial governments continue efforts to ensure cooperation and to foster strong relationships with our international trading partners, particularly the United States; and

3. That the Legislative Assembly of Prince Edward Island commend all those involved who assisted and supported the Prince Edward Island potato industry during the potato wart crisis.

Conclusion

This report effectively concludes the work of your Committee on the topic of the potato wart crisis in the Province of Prince Edward Island.

Your Committee thanks and acknowledges all intervenors for their time and efforts in assisting your Committee in its investigations into the potato wart crisis. It was a devastating period for growers, their families, farm workers, dealers, exporters, support industries, those involved in the industry and Islanders from all walks of life. The experience and the expertise that has been gained, at great cost, financially and otherwise, will serve to ensure that a similar crisis does not recur.

Respectfully submitted,

Norman MacPhee, MLA, Chairman
Standing Committee on Agriculture, Forestry and Environment